

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-0599V

ELIZABETH BACON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 30, 2024

*Catherine Wallace Costigan, Maglio Christopher & Toale, PA, Washington, DC, for
Petitioner.*

Mark Kim Hellie, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On June 1, 2022, Elizabeth Bacon filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) resulting from influenza (“flu”) and tetanus diphtheria acellular pertussis (“Tdap”) vaccines received on November 11, 2020. Petition at 1-7; Stipulation, filed May 29, 2024, at ¶¶ 1-4. Petitioner further alleges that the vaccines were administered in the United States, her vaccine-related injuries have lasted more than six months, and neither Petitioner, nor any other party, has ever brought an action or received compensation in the form of an award or settlement for Petitioner’s vaccine-related injuries. Petition at ¶¶ 23, 25, 26; Stipulation at ¶¶ 3-5; Ex. 1 at 5-8; Ex. 17 at ¶ 2. “Respondent denies that petitioner sustained the onset of a Table SIRVA within the Table

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

timeframe and further denies that the flu or Tdap vaccines caused petitioner's alleged shoulder pain, any other injury, or her current condition." Stipulation at ¶ 6.

Nevertheless, on May 29, 2024, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

- A. **A lump sum of \$75,000.00 in the form of a check payable to Petitioner;**
and
- B. **A lump sum of \$3,500.06, representing compensation for full satisfaction of the Optum Medicaid lien from the State of Louisiana in the form of a check jointly payable to Petitioner and**

**Optum
P.O. Box 182643
Columbus, OH
Optum Event No. 116442959
Tax ID 41-1858498**

Petitioner agrees to endorse this check for \$3,500.06 to Optum.

Stipulation at ¶ 8. These amounts represent compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS**

ELIZABETH BACON,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

Case No. 22-599V (ECF)
CHIEF SPECIAL MASTER
CORCORAN

STIPULATION

The parties hereby stipulate to the following matters:

1. Elizabeth Bacon, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly related to petitioner’s receipt of the influenza (“flu”) and tetanus, diphtheria, and acellular pertussis (“Tdap”) vaccines, which are vaccines contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a).
2. Petitioner received the vaccines on November 11, 2020.
3. The vaccinations were administered within the United States.
4. Petitioner alleges that she suffered from a right shoulder injury related to vaccine administration (“SIRVA”) within the Table time period after receiving the flu and Tdap vaccines. She also alleges that she experienced the residual effects of these injuries for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her alleged injuries.

6. Respondent denies that petitioner sustained the onset of a Table SIRVA within the Table timeframe and further denies that the flu or Tdap vaccines caused petitioner's alleged shoulder pain, any other injury, or her current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- A. A lump sum of \$75,000.00 in the form of a check payable to petitioner; and
- B. A lump sum of \$3,500.06,¹ representing compensation for full satisfaction of the Optum Medicaid lien from the State of Louisiana in the form of a check jointly payable to petitioner and

Optum
P.O. Box 182643
Columbus, OH
Optum Event No. 116442959
Tax ID 41-1858498

Petitioner agrees to endorse this check for \$3,500.06 to Optum.

This amount totaling \$78,500.06 represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

¹ This amount represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Louisiana or Optum may have against any individual as a result of any Medicaid payments the State of Louisiana or Optum has made to or on behalf of Elizabeth Bacon as a result of her alleged vaccine-related injury suffered on or about November 11, 2020, under Title XIX of the Social Security Act, see 42 U.S.C. § 300aa-15(g), (h).

9. As soon as practicable after the entry of judgment in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 *et seq.*)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursed expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit, and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action

(including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.*, on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu and Tdap vaccinations administered on November 11, 2020, as alleged by petitioner in a petition for vaccine compensation filed on or about June 1, 2022, in the United States Court of Federal Claims as petition No. 22-599V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu or Tdap vaccines caused petitioner's alleged SIRVA, caused any shoulder injury, any other injury, or her current condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

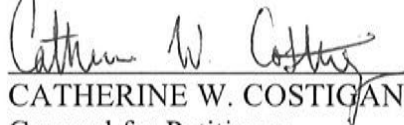
Respectfully submitted,

PETITIONER:

Electronically Signed:  2024-05-23 15:19:27 UTC - 45 21 84 254
Nintex AccuSign® 80290030-2017-470e-8505-6179010c1064

ELIZABETH BACON

**ATTORNEY OF RECORD FOR
PETITIONER:**



CATHERINE W. COSTIGAN
Counsel for Petitioner
Maglio, Christopher & Toale
1015 15th St. NW, Suite 1125
Washington, DC 20005
ccostigan@mctlaw.com
(888) 952-5242

**AUTHORIED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**



HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**

Jeffrey S. Beach -S Digitally signed by
Jeffrey S. Beach -S
Date: 2024.03.08
09:30:51 -05'00' for

CDR GEORGE REED GRIMES, MD, MPH
Director, Division of Injury
Compensation Programs
Health Systems Bureau
Health Resources and
Services Administration
U.S. Department of Health and
Human Services
5600 Fishers Lane, 08W-25A
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**



MARK K. HELLIE
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
mark.hellie@usdoj.gov
(202) 616-4208

Dated: May 29, 2024